DEC 17 195
HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 521

BROWN LAND AND ROYALTY COMPANY
Petitioner

versus

FRANCES CLARK GREEN ET ALS
Defendants

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION

ROBERT G. CHANDLER
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Shreveport, Louisiana

LECOMTE, SHREVEPORT, LOUISIANA

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES

MAY IT PLEASE THE COURT:

Pursuant to the provisions of Paragraph 4 of Rule 24 we comment briefly upon Respondents' opposition to the petition for the writ amplifying the reasons why we believe the petition should be granted.

The fundamental position taken by Respondents is that even conceding that they have wronged and deceived this Petitioner, that nevertheless no judgment in Petitioner's favor could be rendered if a trial were had. In effect they have interposed a demurrer or what we in Louisiana call an exception of no cause of action.

It is our view that the question presented to the Court of Appeals was whether a prima facie case had been shown warranting action by it and that the merits of the petition were to be determined by the District Court following the introduction of evidence and a consideration of the authorities. However since Respondents take the position they do take, we reply that the Law of Louisiana is perfectly clear to the effect that the acceptance of the succession of an ancestor binds the heirs in warranty to the same extent the ancestor was bound, warranty being a debt of succession. We direct Your Honors' attention to *Berry vs. Wagner* 151 Louisiana 456, 91 So. 837, where the then Chief Justice said:

> "An heir who, after arriving at the age of majority, either expressly or tacitly accepts the succession unconditionally, that is, without the benefit of inventory, thereby binds himself for the debts or obligations of the deceased person, the same as if himself had contracted them. Rev. Civ. Code, Arts. 1013 and 1423. Among the obligations for which an unconditional heir is liable is the obligation of warranty, on the part of the deceased person, to defend a title which he has conveyed."

This proposition is also recognized in the following authorities:

> *Griffing vs. Taft*, 151 La. 442; 91 So. 823
> *Soule vs. West*, 185 La. 655, 170 So. 26
> *Cook vs. Martin*, 188 La. 1063; 178 So. 881
> *Robinson vs. Dunson*, 65 So. 2d 643

So far as we know there is no Louisiana authority which questions this proposition. Therefore, Mrs. Clark having

executed a warranty deed to Petitioner's ancestor in title and her children having accepted her succession, they are bound in warranty just the same as Mrs. Clark was bound.

Respondents quote the Louisiana Supreme Court to the effect that this Petitioner either knew or should have known the facts now presented. Regardless of this statement of the Supreme Court of Louisiana, this Petitioner did not know these facts and even if it had known of them, that can not avail these Respondents in view of Your Honors' ruling in *Hazel-Atlas Glass Co. vs. Hartford-Empire Co.* 322 U. S. 238 where Justice Black speaking for the Court used the following language which we take from page 246 of the U. S. Report:

> "The Circuit Court did not hold that Hartford's fraud fell short of that which prompts equitable intervention, but thought Hazel had not exercised proper diligence in uncovering the fraud and that this should stand in the way of its obtaining relief. We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the highest degree of diligence Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. *Mercoin Corporation vs. Mid-Continent Investment Co.*, 320 U. S. 661; *Morton Salt Co. vs. G. S. Suppiger Co.*, 314 U. S. 488. Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions

> in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

Respondents say on page 9 of their opposition that this petition does not suggest that there was any tampering with the process of a federal court. We had not known that tampering with the process of a state court was legitimate and tampering with the process of a federal court illegitimate. Be that as it may, we say that the federal court would never have rendered the judgment it did render had not these Respondents tampered with the process of the Louisiana Court.

Respondents also take the position that the decision of the Louisiana Supreme Court is decisive here. There is no merit in this contention because the Louisiana Court ruled against this Petitioner solely on the ground of res adjudicata predicated upon the very judgment this Petitioner now seeks to set aside. We direct Your Honors' attention to the following statement made by the Supreme Court of Louisiana in deciding *Brown Land & Royalty Co. vs. Hattie C. Pickett et als*, 226 La. 88, 75 So. 2d 18:

> "Inasmuch as an affirmance of the lower court's judgment on the plea of res judicata renders it unnecessary to consider the exceptions of no cause and no right of action, and is also conclusive of the arguments advanced for the cancellation of the

> mineral lease held by the Texas Company, it will be needless for us to discuss these issues."

It is therefore clear that if the judgment of the United States Court of Appeals is set aside and this Petitioner allowed to file its petition, the decision of the Louisiana Court would have no foundation upon which to rest and hence has no bearing on the issues now presented.

CONCLUSION

We suggest that in view of the opposition filed by Respondents that the issues presented here are now clarified. It is conceded (if only for the sake of argument) that these Respondents did tamper with the process of the Louisiana Court. The sole question remaining is whether admitting this to be true this Petitioner is entitled to relief. We believe that it is. Mrs. Clark did execute a warranty deed to the Petitioner's ancestor in title. These Respondents (the children of Mrs. Clark) did accept her succession. The Louisiana Law is perfectly clear that the fact of acceptance makes the acceptors liable for all the debts of the succession and a warranty is a debt.

We suggest this Petitioner is entitled to the relief it seeks and that Respondents should not be allowed to profit by their own wrong.

Respectfully submitted,

BROWN LAND & ROYALTY CO.
By its attorney:

Robert G. Chandler

CERTFICATE

I, Robert G. Chandler, Attorney for the Brown Land & Royalty Company, Inc., hereby certify that I have served copies of the foregoing reply upon the following counsel of record:

Fred C. Claiborne
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Attorneys of record for the heirs of Calvin E. Clark, constituting all of the defendants in counterclaim except The Texas Company

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by placing the same properly addressed in the United States Mail with adequate postage for First Class Mail having been first affixed thereto.

Shreveport, Louisiana, December ———, 1955.

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